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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/554,288

02/06/2006

Mark J. Redmond

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7590

02/03/2011

ROTHWELL, FIGG, ERNST & MANBECK, P.C.

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WASHINGTON, DC 20005

EXAMINER

MACAULEY, SHERIDAN R

ART UNIT

PAPER NUMBER

1651

NOTIFICATION DATE

DELIVERY MODE

02/03/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTO-PAT-Email@rfem.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/554,288	<b>Applicant(s)</b> REDMOND ET AL.	
	<b>Examiner</b> SHERIDAN R. MACAULEY	<b>Art Unit</b> 1651	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11, 14-16 and 28-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 11, 14, 15, 29, 32, 34, 35 and 37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

A response and amendment were received and entered on April 6, 2010. All evidence and arguments have been fully considered. New claims 35-37 are added. Claims 1-11, 14-16 and 28-37 are pending and examined on the merits in this Office action.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
2. Claims 4-10, 16, 28, 30, 31, 33 and 36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claims 4 and its dependents are rendered indefinite by the recitation of "wherein, said step of removing particulate material further comprises ... removing coagulated material from said extract" in claim 4, which depends from claim 1. Claim 1 recites, "wherein the step of removing particulate material comprises: using only one step of microfiltration". Claim 16 and its dependents are similarly rendered indefinite by the recitation of "wherein, said step of removing particulate material comprises ... removing coagulated material from said extract ... using only one step of microfiltration" in claim 16. The claims are indefinite because it is unclear whether the step of "removing coagulated material" uses the "only one step of microfiltration" or whether the "only one step of microfiltration" is limited to a method step that occurs after the removal of

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coagulated material. For instance, step (ii) of claim 16 could read upon any of three alternatives: (1) (a) removing coagulated material using microfiltration, (b) enzymatically digesting starch material, and (c) using only one step of microfiltration to remove particulates; (2) (a) removing coagulated material using only one step of microfiltration, and (b) enzymatically digesting starch material; or (3) (a) removing coagulated material using a separation technique that does not include microfiltration, (b) enzymatically digesting starch material, and (c) using only one step of microfiltration. Any of the three alternatives would read upon the claims. Thus, the metes and bounds of the claims would be unclear to one of ordinary skill in the art.

#### ***Claim Rejections - 35 USC § 103***

4. Rejections under 35 USC 103 have been withdrawn due to amendment.

#### ***Response to Arguments***

5. Applicant's arguments with respect to claims 4-10, 16, 28, 30, 31, 33 and 36 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Allowable Subject Matter***

6. Claims 1-3, 11, 14, 15, 29, 32, 34, 35 and 37 are allowed. The claims recite a novel method for the purification of beta glucan using an alkaline extraction and wherein particulate material is removed using only one step of microfiltration consisting of microfiltration with a cutoff of 0.2 microns followed by an alcohol precipitation.

### ***Conclusion***

No claims are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHERIDAN R. MACAULEY whose telephone number is (571)270-3056. The examiner can normally be reached on Mon-Thurs, 7:30AM-5:00PM EST, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on (571) 272-0926. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SRM

/Ruth A. Davis/

Primary Examiner, Art Unit 1651